

**MINUTES OF THE
UTAH TAX REVIEW COMMISSION**

Thursday, June 11, 2009 – 1:30 p.m. – Room 415 State Capitol

Members Present:

Mr. David Crapo, Vice Chair
Mr. Mark K. Buchi
Rep. John Dougall
Ms. Janis A. Dubno
Sen. Brent Goodfellow
Sen. Lyle W. Hillyard
Ms. Kathleen Howell
Comm. Bruce Johnson
Rep. Christine A. Johnson
Mr. Bruce Jones
Rep. Todd E. Kiser
Mr. Dixie Leavitt
Sen. Wayne L. Niederhauser

Members Absent:

Mr. M. Keith Prescott, Chair
Mr. Larry Barusch

Staff Present:

Mr. Phillip V. Dean, Policy Analyst
Mr. Leif Elder, Policy Analyst
Mr. Bryant R. Howe, Assistant Director
Ms. Angela D. Oakes, Associate General Counsel
Ms. Rebecca L. Rockwell, Associate General Counsel
Mr. Jacob Wright, Research Assistant
Ms. Phalin L. Flowers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. TRC Business

Vice Chair Crapo called the meeting to order at 1:34 p.m. He excused Mr. Prescott from the meeting.

MOTION: Sen. Goodfellow moved to approve the minutes of the May 1, 2009 meeting. The motion passed unanimously with Sen. Niederhauser absent for the vote.

Vice Chair Crapo gave an update on the sales and use tax study process approved by the TRC at its last meeting. He said that there is not support at this time for a high level study. The TRC must now decide whether to gather additional information on the subject or approve the report and recommendations of the Sales and Use Tax Working Group as now written.

Mr. Buchi said that the working group left several issues undecided. For example, one issue not finalized by the working group was whether to impose a sales and use tax on health care service at the point of sale or to impose the tax on health insurance premiums. He suggested that the full TRC needs to at least review these issues and options identified by the working group.

MOTION: Mr. Buchi moved that the full TRC review the issues and options presented by the Sales and Use Tax Working group. The motion passed unanimously with Sen. Goodfellow, Sen. Hillyard, Rep. Johnson, and Sen. Niederhauser absent for the vote.

2. State Corporate Franchise and Income Taxes - 50% Deduction for Income of a Foreign Operating Companies

Mr. Howe explained that for the 2007 tax year, the Utah State Tax Commission (Tax Commission) did not enter into its management information systems all information contained on state corporate franchise and income tax returns and accompanying schedules. Therefore, absent a manual review of all state corporate franchise and income tax returns, information on how many taxpayers claimed this deduction and the characteristics of those taxpayers is unknown. He said that this information will be collected for the 2008 tax year.

Mr. Steve Young, Holme Roberts & Owen, and Chair of the Tax Section of the Utah State Bar, explained what constitutes a foreign operating company. He said that a foreign operating company is incorporated in the United States but its primary operations are located overseas. He explained that the deduction as currently structured is not appropriate and should be changed. He emphasized that any changes should not be applied retroactively. Mr. Young also answered questions from the TRC.

Commissioner Johnson reminded the TRC that the Tax Commission asked the TRC to review this deduction to limit its application to bona fide foreign operating companies. He said that one option would be to require that a foreign operating company have a minimum payroll amount in order to claim the deduction. He said that the minimum amount needs to be high enough to separate bona fide operations from those that are not bona fide operations.

Mr. Kim Ferrell, Managing Auditor, Corporate Section, Tax Commission, said that taxing 100 percent of a foreign operating company's income would also include 100 percent of income that is factored, which actually lowers the tax rate.

MOTION: Vice Chair Crapo moved to ask the Tax Commission to work with staff and practitioners to prepare draft legislation regarding the 50 percent deduction for income of a foreign operating company and bring the draft legislation back to the TRC for discussion. The motion passed with Rep. Dougall voting in opposition and Sen. Niederhauser absent for the vote.

3. Cigarette and Tobacco Products Excise Taxes

Mr. John Nothdurft, The Heartland Institute, gave a presentation to the TRC by conference call. He spoke in opposition to raising Utah's excise tax on cigarettes and tobacco products because he said the revenue from excise taxes does not fix underlying budget problems. He said an excise tax on cigarette and tobacco products is highly regressive and discriminates against a minority of taxpayers. Mr. Nothdurft said he believes it would be bad fiscal policy for Utah to raise its tax rate on cigarette and tobacco products at this time and that some states are actually experiencing net revenue losses because their tobacco taxes are so high. Mr. Nothdurft also answered questions from the TRC.

Mr. Scott Brown, American Heart Association, addressed the volatility of taxes on cigarette and tobacco products. He said Tax Commission figures show that the tax has been relatively stable and has remained level over the last five years.

Mr. Wright distributed and discussed "Cigarette and Tobacco Products Tax Information for the Utah Tax Review Commission." He presented information to answer questions raised at the previous meeting. He also answered questions from the TRC.

Mr. David Stringfellow, Governor's Office, addressed the TRC regarding the price elasticity of demand for cigarettes.

Mr. Danny Harris, American Cancer Society Cancer Action Network, spoke in support of raising excise taxes on cigarette and tobacco products. He discussed the health and financial benefits to individuals who quit smoking. He explained that his organization does not promote increasing state revenues, but rather promotes the health benefits of smoking cessation. Mr. Harris also answered questions from the TRC.

Mr. Michael Siler, Director of Government Relations, Utah Chapter, American Cancer Society, explained to the TRC that the numbers reported by the Utah Department of Health on Medicaid

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expenditures related to smoking only include smoking specific costs and do not include other smoking costs paid by Medicaid, including heart and lung disease.

TRC discussion followed.

MOTION: Sen. Hillyard moved to review the basic principles of good tax policy adopted by the TRC to review and answer each question posed by the chairs of the Revenue and Taxation Interim Committee regarding state excise taxes on cigarette and tobacco products. The motion passed unanimously.

Rep. Dougall, Rep. Johnson, and Mr. Jones agreed to serve on a working group to further review this issue.

4. Other Items / Adjourn

MOTION: Rep. Johnson moved to adjourn the meeting. The motion passed unanimously.

Vice Chair Crapo adjourned the meeting at 4:10 p.m.